



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

is no doubt that money borrowed by the husband is everywhere considered community property.¹⁰ And, viewing the question in a larger way, the rule is in harmony with the original and fundamental theory of the community. The business credit of the wife, like her ability or industry, is as much an asset of the conjugal partnership as the husband's skill, labor and credit. As a practical matter, a loan is as often made on the faith of the borrower's business standing as upon the fact of the possession of definite property.

The Spanish-American law classed money borrowed by the husband as acquired by "onerous" title as distinguished from "lucrative" title. The wife, under that system, could not contract without his consent. If she did have the consent, her contracts bound not only her "dotal" property, but also the "community". Wherever she could contract, therefore, the borrowed money was acquired by "onerous" title, and constituted a part of the "bienes gananciales," or community property.¹¹

O. K. M.

Constitutional Law: Concurrent Powers of Congress and the States under the Commerce Clause: Conflicting State and Federal Laws.—It is a well established principle that a Federal law supersedes all State laws on the same subject, although within the concurrent jurisdiction of the States and Congress. The case of *St. Louis etc. Ry. Co. v. Hesterly*¹ decides that all State laws on the subject of the liability of railroad carriers to their employees for injuries received through the negligence of the carrier, are superseded by the Federal Employers' Liability Act of April 22, 1908, so far as such laws apply to employees engaged in interstate commerce. The Federal Act makes every interstate railroad carrier liable in damages to anyone employed by it in interstate commerce, suffering injury through the negligence of the carrier, or, in case of his death from such injuries, to his personal representative for the benefit of the widow, children, parents or next of kin. In *Fulgham v. Midland Valley R. Co.*² it was held that the Federal act covered the whole field of the relations of interstate railroad carriers to their employees engaged in interstate commerce and that the omission from the act of any provision for the survival of the cause of action accruing to the injured person himself was a declaration by Congress that, in the absence of other controlling statute, the common law should govern, and that there should be no survival of such cause of action.

A statute of Arkansas provided that the personal representative of any one who died as a result of personal injuries inflicted in the State through the negligence of another could recover for the injury and pain suffered by the deceased as well as for the financial loss to the estate. An employee of an interstate railway carrier, while

¹¹ Escriche, *Diccionario de Legislacion y Jurisprudencia*, under Titles, "Titulo Oneroso," "Bienes Gananciales," and "Mujer Casada."

¹ (1913) 228 U. S. 702, 33 Supreme Court Reporter 703.

² (1909) 167 Fed. 660.

employed in interstate commerce in Arkansas, was killed through the negligence of the carrier. Suit was brought in St. Louis etc. Ry. Co. v. Hesterly,³ under the State act, for the pecuniary loss to the next of kin and for the injury and pain suffered by the deceased. The Arkansas court held that the State act applied, and that recovery could be had on both causes of action; that the State act was not a regulation of interstate commerce, but was only a general statute relating to the rights and liabilities of persons within the State and did not conflict with the Federal act, which was only supplementary. The United States Supreme Court held that the State act was superseded by the Federal act, and that the cause of action of the deceased did not survive to the personal representative.

The case recognizes the principle that, in many matters falling within the police power of the States and also touching interstate commerce, the States and Congress have concurrent jurisdiction, and that the States may act until Congress acts. It thus upholds cases like *Sherlock v. Alling*⁴ and *Savage v. Jones*,⁵ in which the State statutes were held not to have been superseded because the Federal acts did not cover the same field. While recognizing this principle, it also re-affirms the doctrine developed in the *Second Employers' Liability Cases*,⁶ and in other recent cases,⁷ that once Congress does assume jurisdiction over the field, its jurisdiction is exclusive, and "the laws of the States, in so far as they cover the same field, are superseded; for, necessarily, that which is not supreme must yield to that which is." This rule applies in spite of the fact that Congress did not in terms abrogate the State legislation,⁸ and though the State statute was enacted prior to the Federal statute and at a time when Congress had not yet acted on the subject.⁹

H. C. K.

Constitutional Law: Extent of the Power of Congress under the Commerce Clause: Acts included in Interstate Commerce.—The tendency of the United States Supreme Court appears to be toward asserting as wide a scope as possible for the operation of the Federal Employers' Liability Act. The Act is being applied in favor of classes of employees who, before the passage of the Act, probably would not have been regarded as employees engaged in interstate commerce. For example, in *St. Louis etc. Ry. Co. v.*

³ (1911) 98 Ark. 240, 135 S. W. 874.

⁴ (1876) 93 U. S. 99.

⁵ (1912) 225 U. S. 501.

⁶ (1912) 223 U. S. 1.

⁷ *Michigan Central R. Co. v. Vreeland*, (1913) 227 U. S. 59, 66; *Northern Pacific Ry. Co. v. State of Washington*, (1912) 222 U. S. 370; *Southern Ry. v. Railroad Commission of Indiana*, (Ind. 1913) 100 N. E. 337.

⁸ *Melzner v. Northern Pacific Ry. Co.*, (1912) 46 Mont. 277, 127 Pac. 1002.

⁹ *Rich v. St. Louis etc. R. Co.*, (1912) 166 Mo. App. 379, 148 S. W. 1011.